

CITY OF CORONA
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

(Jeremy Swanson *et al.* v. County of Riverside *et al.* – Case No. RIC 1611766)

1. PARTIES.

This Settlement Agreement and Mutual Release (“Agreement”) is entered into by and between Plaintiffs Jeremy Swanson, Josh Swanson, Lesli Swanson-Harvey, Michael Andersen, Chad Andersen, Brooke Andersen, Melody Andersen-Martin and Sean Michael Martin, each individually and on behalf of the estates of Michael Martin, Ricky Andersen and Barry Swanson, respectively (“Plaintiffs”) and Defendant City of Corona (“City”). Plaintiffs and City are sometimes referred to individually as “Party” and collectively as the “Parties” in this Agreement.

2. RECITALS.

2.1 Subject Action. On or about September 13, 2016 and October 4, 2016, Plaintiffs filed complaints in the Riverside Superior Court, Case Nos. RIC 1611766 and RIC 1612885 against the City (and other entities which are not parties to this Agreement). Those complaints were consolidated for all purposes into a single action under Case No. RIC 1611766 via stipulation and order on November 22, 2016 (the “Subject Action”). In the Subject Action, Plaintiffs allege, in essence, that the City and its personnel negligently contributed to the homicides of Plaintiffs’ decedents, Michael Martin, Ricky Andersen and Barry Swanson, at the hands of Brandon Martin on or about September 17, 2015 (the “Incident”).

2.2 Denial of Plaintiff’s Allegations. The City denies generally and specifically each of the allegations made against it in the Subject Action, and further denies any wrongdoing or liability. The City has filed anti-SLAPP motions pursuant to Code of Civil Procedure section 425.16 against Plaintiffs, which are scheduled to be heard on December 15, 2016 and January 9, 2017 (“anti-SLAPP motions”).

2.3 Settlement. The Parties now desire to fully and finally settle and resolve any and all rights, claims, disputes, causes of action and alleged claims which currently exist or may in the future exist in favor of the Parties, including, but not limited to, all claims arising out of and set forth in the Subject Action. The Parties expressly intend that this settlement shall further pertain to any claims for attorneys’ fees, expert fees, witness fees, and/or other costs, and any alleged claims for abuse of process, malicious prosecution, civil rights violations, etc., in connection with the Subject Action.

2.4 Consideration. In consideration of the foregoing recitals and mutual covenants and warranties set forth herein, and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties agree to the terms of this Agreement.

3. TERMS.

3.1 Recitals. The Recitals are incorporated into and are a part of this Agreement.

3.2 City Settlement Obligation. In consideration of this Agreement, and the promises set forth herein, the City agrees to take its anti-SLAPP motions off-calendar within three (3) court days of Plaintiffs dismissing the City from the Subject Action with prejudice.

3.3 Plaintiffs' Settlement Obligation; Dismissal of Action. In further consideration of this Agreement, and the promises set forth herein, Plaintiffs agree to execute and cause to be filed a full and complete dismissal of the Subject Action as against the City, with prejudice. In further consideration of this Agreement, and the promises set forth herein, Plaintiffs agree to join in any motion for good faith settlement filed by the City in the Subject Action.

3.4 Each Party to Bear Its Own Costs and Fees. Each Party shall bear its own attorney's fees and all other costs (including costs of expert witnesses or other consultants) incurred in the preparation for filing, prosecution of and defense of the Subject Action and in the preparation, negotiation, and drafting of this Agreement.

3.5 Mutual Release. In further consideration of this Agreement and in recognition of the benefits to be derived therefrom, and except as to the rights, duties, and obligations of the Parties as set forth in this Agreement, the Parties, and each of them, hereby release and fully, finally and forever discharge each and every other Party, as well as their respective elected and appointed officials, board members, owners, predecessors, successors, heirs, executors, administrators, members, managers, assigns, agents, directors, officers, partners, employees, representatives, insurance companies, law firms and lawyers, and all persons acting by, through, under, or in concert with them or any of them, past and present (hereinafter collectively called "Additional Releasees") of and from any and all manner of actions or causes of action, in law or in equity, suits, debts, liens, liabilities, claims, demands, and damages of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Released Claims"), including, without limitation, Released Claims which any Party now has or may in the future have against any other Party and/or the Additional Releasees, as alleged in or arising out of, or which could have been raised in or could have been related to the Incident and/or Subject Action.

3.6 Civil Code section 1542 Release. The Parties, and each of them, intend that this Agreement shall be a full and final settlement of and bar to any and all claims and/or causes of action arising between and/or among them, including without limitation, the Released Claims. In connection with the release made herein, the Parties acknowledges that they may hereafter discover facts different from or in addition to the facts which they may know or believe to be true with respect to the Subject Action and/or the Released Claims, but that they intend to fully and forever settle all disputes with each other and Additional Releasees. In furtherance of such intention, the release given herein shall be and remain in effect as a full and complete mutual release, notwithstanding discovery of any such different or additional facts. Therefore, the Parties acknowledge that they has been informed of, and are familiar with, the provisions of Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

The Parties, and each of them, hereby waive and relinquish all rights and benefits under Civil Code section 1542 to the full extent that they may lawfully waive all such rights and benefits pertaining to the claims and/or causes of action arising between and/or among them, including without limitation, the Released Claims.

3.7 Continuing Jurisdiction of Court. The Parties stipulate that the Court shall continue to have jurisdiction over this matter to enforce this settlement pursuant to Code of Civil Procedure section 664.6.

3.8 Denial of Liability. The Parties agree and mutually acknowledge that this Agreement is for settlement purposes only. The Parties have denied, and continue to deny, any wrongdoing in connection with the actions or inactions alleged in the Subject Action. Neither this Agreement nor any action taken pursuant to this Agreement shall constitute any admission of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties, or any admission by and of the Parties of any claim or allegations made in any action against such party. This Agreement is entered into to avoid the attorneys' fees, costs, expenses and risks associated with continued litigation of the claims and defenses asserted in the Subject Action, including, without limitation, the Released Claims.

3.9 No Assignment of Claim. The Parties represent and warrant that they have not sold, assigned or transferred, or purported to sell, assign or transfer, and shall not hereafter sell, assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, rights, actions, or causes of action released pursuant to this Agreement, including, without limitation, the Released Claims.

3.10 Tax Consequences. The Parties make no representations as to whether there are any tax consequences associated with this Agreement, including, but not limited to, the Settlement Amount. The Parties agree that each Party is responsible for making its own determination of the tax consequences of the settlement and this Agreement.

3.11 Integrated Agreement. This Agreement is the final and entire agreement between the Parties concerning the subject matter of this Agreement. All agreements of the Parties with respect to the subject matter hereof are in writing and supersede all prior written and oral agreements and understandings of the Parties. This Agreement cannot be modified except by a written document signed by all of the Parties. None of the Parties are relying upon any other negotiations, discussions or agreements in connection with the subject matter of this Agreement. This is a fully integrated agreement.

3.12 Warranty of Authorization. Any person executing this Agreement on behalf of any Party does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Agreement on behalf of, and to fully bind, such Party.

3.13 Independent Representation by Counsel. The Parties represent and declare that in executing this Agreement, they have relied solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently-selected counsel, if they chose to retain counsel, concerning the nature, extent and duration of their rights and claims hereunder, and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omission pertaining to any of the matters herein contained by any Party or by any persons representing any Party. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiating and preparing this Agreement, or could have had such assistance and voluntarily declined to obtain such assistance.

3.14 Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to instruments, persons and transactions having legal contacts and relations solely within the State of California. Venue for any such action shall be in the Superior Court for the County of Riverside.

3.15 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such a portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force and effect as though such invalid or unenforceable provisions or portions had not been a part of this Agreement.

3.16 Construction. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

3.17 Headings. The headings of this Agreement are for convenience and ease of reference only, and shall not be used to construe, expand, or limit the terms of this Agreement.

3.18 Execution in Counterparts. This Agreement may be executed in counterparts by the Parties, by either an original signature or signature transmitted by facsimile or electronic transmission, or other similar process, and shall become effective and binding upon the Parties at such time as all of the signatories hereto have signed the original or a counterpart original of this Agreement. All counterparts so executed shall constitute one Agreement, binding upon all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the original or the same counterpart.

3.19 Attorney's Fees. Should any Party hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, as set forth in the Agreement, including, but not limited to, instituting or defending any action or proceeding to enforce any provision of this Agreement, for damages by reason of any alleged breach of any provision hereof, for declaration of such Party's rights or obligations hereunder, or for any other judicial remedy, then, if said matter is settled by arbitration or judicial determination, the prevailing Party shall be entitled to be reimbursed by the losing Party or Parties for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs.

3.20 Survivability of Covenants. All representations and agreements set forth in this Agreement shall be deemed continuing and shall survive the execution date of this Agreement.

3.21 No Construction Against Drafter. Each of the Parties agrees that each has participated in arriving at the final language of this Agreement and, therefore, this Agreement shall not be construed against any party as the drafter.

3.22 Covenant to Take Further Actions Necessary. The Parties hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purpose of this Agreement, with the Parties to bear their own costs and attorneys' fees for these additional actions.

3.23 Third-Party Beneficiaries. Except for the rights of beneficiaries pursuant to the releases provided, there are no third-party beneficiaries to this Agreement, and nothing herein shall confer any enforceable rights on non-signatory persons or entities.

3.24 Effective Date. This Agreement shall be effective as of the date of its complete execution by the last signing Party.

3.25 Valuable Consideration; Finality. This Agreement is entered into in consideration of the recitals, promises, mutual covenants and warranties set forth in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Parties. This Agreement is intended to be final and binding on each of the Parties, and is further intended to be effective as a full and final accord and satisfaction between them regardless of any claims of fraud, misrepresentation, concealment of fact, mistake of fact or law, or any other circumstances whatsoever. Each Party relies upon the finality of this Agreement as a material factor inducing that Party's execution of this Agreement.

[SIGNATURES ON FOLLOWING 3 PAGES]

**CITY
SIGNATURE PAGE FOR
CITY OF CORONA
SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

(Jeremy Swanson *et al.* v. County of Riverside *et al.* – Case No. RIC 1611766)

THE UNDERSIGNED HEREBY DECLARES THAT THE TERMS OF THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE HAVE BEEN COMPLETELY READ AND ARE FULLY UNDERSTOOD, AND BY EXECUTION HEREOF VOLUNTARILY ACCEPTS THE TERMS WITH THE INTENT TO BE LEGALLY BOUND THEREBY.

CITY OF CORONA

By:



Darrell Talbert
City Manager

12-16-16
Date

Attest:



Lisa Mobley
City Clerk

Approved as to Form:



Dean Derleth
John Higginbotham
City Attorney's Office
Attorneys for City of Corona

PLAINTIFFS (SWANSON AND ANDERSEN)
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By: _____ Date _____
Jeremy Swanson, individually and
on behalf of the Estate of Barry Swanson

By: _____ Date _____
Josh Swanson, individually and
on behalf of the Estate of Barry Swanson

By: _____ Date _____
Lesli Swanson-Harvey, individually and
on behalf of the Estate of Barry Swanson

By: _____ Date _____
Michael Andersen, individually and on
behalf of the Estate of Ricky Andersen

By: _____ Date _____
Chad Andersen, individually and
on behalf of the Estate of Ricky Andersen

By: _____ Date _____
Brooke Andersen, individually and
on behalf of the Estate of Ricky Andersen

Approved as to Form:

Michael J. Bidart
Ricardo Echeverria
Shernoff Bidart Echeverria, LLP
Attorneys for Plaintiffs

Brian J. Panish
David A. Rudorfer
Panish Shea & Boyle, LLP
Attorneys for Plaintiffs

**PLAINTIFFS (MARTIN)
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By: _____
Melody Andersen-Martin, individually and on behalf of the Estate of Michael Martin
Date _____

By: _____
Sean Michael Martin, individually and on behalf of the Estate of Michael Martin
Date _____

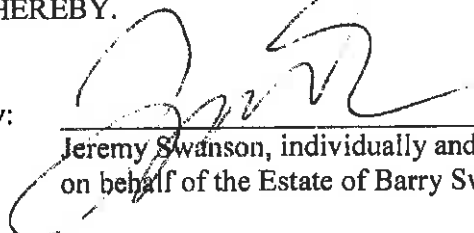
Approved as to Form:

David M. Ring
James W. Lewis
Taylor & Ring
Attorneys for Plaintiffs

PLAINTIFFS (SWANSON AND ANDERSEN)
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By: 

Jeremy Swanson, individually and
on behalf of the Estate of Barry Swanson

11/30/16

Date

By: _____
Josh Swanson, individually and
on behalf of the Estate of Barry Swanson

Date

By: _____
Lesli Swanson-Harvey, individually and
on behalf of the Estate of Barry Swanson

Date

By: _____
Michael Andersen, individually and on
behalf of the Estate of Ricky Andersen

Date

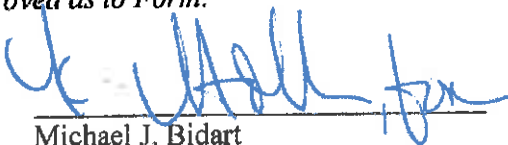
By: _____
Chad Andersen, individually and
on behalf of the Estate of Ricky Andersen

Date

By: _____
Brooke Andersen, individually and
on behalf of the Estate of Ricky Andersen

Date

Approved as to Form:



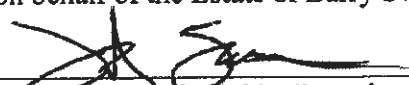
Michael J. Bidart
Ricardo Echeverria
Shernoff Bidart Echeverria, LLP
Attorneys for Plaintiffs

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David A. Rudorfer
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By:  _____ Josh Swanson, individually and on behalf of the Estate of Barry Swanson	_____ Date
By: _____ Lesli Swanson-Harvey, individually and on behalf of the Estate of Barry Swanson	_____ Date
By: _____ Michael Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date
By: _____ Chad Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date
By: _____ Brooke Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date

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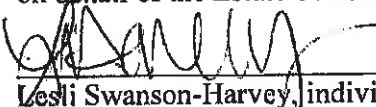
Michael J. Bidart
Ricardo Echeverria
Shernoff Bidart Echeverria, LLP
Attorneys for Plaintiffs

Brian J. Panish
David A. Rudorfer
Panish Shea & Boyle, LLP
Attorneys for Plaintiffs

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By: _____ Josh Swanson, individually and on behalf of the Estate of Barry Swanson	_____ Date
By:  _____ Lesli Swanson-Harvey, individually and on behalf of the Estate of Barry Swanson	<u>11/30/16</u> Date
By: _____ Michael Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date
By: _____ Chad Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date
By: _____ Brooke Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date

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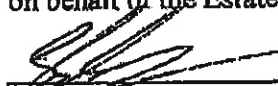
Michael J. Bidart
Ricardo Echeverria
Shernoff Bidart Echeverria, LLP
Attorneys for Plaintiffs

Brian J. Panish
David A. Rudorfer
Panish Shea & Boyle, LLP
Attorneys for Plaintiffs

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By:	_____ Josh Swanson, individually and on behalf of the Estate of Barry Swanson	_____ Date
By:	_____ Lesli Swanson-Harvey, individually and on behalf of the Estate of Barry Swanson	_____ Date
By:	 _____ Michael Andersen, individually and on behalf of the Estate of Ricky Andersen	<u>12/14/2016</u> _____ Date
By:	_____ Chad Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date
By:	_____ Brooke Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date

Approved as to Form:

Michael J. Bidart
Ricardo Echeverria
Shernoff Bidart Echeverria, LLP
Attorneys for Plaintiffs

Brian J. Panish
David A. Rudorfer
Panish Shea & Boyle, LLP
Attorneys for Plaintiffs

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By: _____ Lesli Swanson-Harvey, individually and on behalf of the Estate of Barry Swanson	_____ Date
By: _____ Michael Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date
By: _____ Chad Andersen, individually and on behalf of the Estate of Ricky Andersen	<u>11-30-16</u> Date
By: _____ Brooke Andersen, individually and on behalf of the Estate of Ricky Andersen	_____ Date

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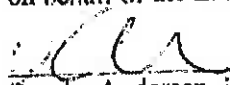
Michael J. Bidart
Ricardo Echeverria
Shernoff Bidart Echeverria, LLP
Attorneys for Plaintiffs

Brian J. Panish
David A. Rudorfer
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Attorneys for Plaintiffs

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Jeremy Swanson, individually and on behalf of the Estate of Barry Swanson	Date
By: _____	_____
Josh Swanson, individually and on behalf of the Estate of Barry Swanson	Date
By: _____	_____
Lesli Swanson-Harvey, individually and on behalf of the Estate of Barry Swanson	Date
By: _____	_____
Michael Andersen, individually and on behalf of the Estate of Ricky Andersen	Date
By: _____	_____
Chad Andersen, individually and on behalf of the Estate of Ricky Andersen	Date
By:  _____	12/2/16 Date
Brooke Andersen, individually and on behalf of the Estate of Ricky Andersen	

Approved as to Form:

Michael J. Bidart
Ricardo Echeverria
Shernoff Bidart Echeverria, LLP
Attorneys for Plaintiffs

 _____
Brian Panish
David A. Rudorfer
Panish Shea & Boyle, LLP
Attorneys for Plaintiffs

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By: Melody Andersen-Martin
Melody Andersen-Martin, individually and
on behalf of the Estate of Michael Martin

11/28/16
Date

By: Sean Michael Martin
Sean Michael Martin, individually and
on behalf of the Estate of Michael Martin

11/28/16
Date

Approved as to Form:

David M. Ring
David M. Ring
James W. Lewis
Taylor & Ring
Attorneys for Plaintiffs